

ANGELO COLES,)
)
 Plaintiff,)
)
 v.) Civil Action No. 03-730-SLR
)
 RAPHAEL WILLIAMS, and)
 STANLEY TAYLOR,)
)
 Defendants.)

The plaintiff, Angelo Coles, is a pro se litigant who is presently incarcerated at the Delaware Correctional Center ("DCC") located in Smyrna, Delaware. He was previously incarcerated at the Multi-Purpose Criminal Justice Facility ("MPCJF") located in Wilmington, Delaware. His SBI number is 248720. He filed this action pursuant to 42 U.S.C. § 1983 and requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915.

Reviewing complaints filed pursuant to 28 U.S.C. § 1915 is a two step process. First, the court must determine whether plaintiff is eligible for pauper status. On August 4, 2003, the court granted plaintiff leave to proceed in forma pauperis and

determined that he had no assets with which to pay an initial partial filing fee. The court ordered plaintiff to file an authorization form within thirty days. Plaintiff filed the authorization form on August 20, 2003.

Once the pauper determination is made, the court must then determine whether the action is frivolous, malicious, fails to state a claim upon which relief may be granted or seeks monetary relief from a defendant immune from such relief pursuant to 28 U.S.C. §§ 1915(e)(2)(B)-1915A(b)(1).¹ If the court finds plaintiff's complaint falls under any one of the exclusions listed in the statutes, then the court must dismiss the complaint.

When reviewing complaints pursuant to 28 U.S.C. §§ 1915(e)(2)(B)-1915A(b)(1), the court must apply the standard of review set forth in Fed. R. Civ. P. 12(b)(6). See Neal v. Pennsylvania Bd. of Probation and Parole, No. 96-7923 1997 WL 338838 (E.D. Pa. June 19, 1997) (applying Rule 12(b)(6) standard as appropriate standard for dismissing claim under

¹ These two statutes work in conjunction. Section 1915(e)(2)(B) authorizes the court to dismiss an in forma pauperis complaint at any time, if the court finds the complaint is frivolous, malicious, fails to state a claim upon which relief may be granted or seeks monetary relief from a defendant immune from such relief. Section 1915A(a) requires the court to screen prisoner in forma pauperis complaints seeking redress from governmental entities, officers or employees before docketing, if feasible and to dismiss those complaints falling under the categories listed in § 1915A (b)(1).

§ 1915A). Accordingly, the court must "accept as true the factual allegations in the complaint and all reasonable inferences that can be drawn therefrom." Nami v. Fauver, 82 F.3d 63, 65 (3d Cir. 1996). Pro se complaints are held to "less stringent standards than formal pleadings drafted by lawyers and can only be dismissed for failure to state a claim if it appears 'beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.'" Estelle v. Gamble, 429 U.S. 97, 106 (1976) (quoting Conley v. Gibson, 355 U.S. 41, 45-46 (1957)).

The standard for determining whether an action is frivolous is well established. The Supreme Court has explained that a complaint is frivolous "where it lacks an arguable basis either in law or in fact." Neitzke v. Williams, 490 U.S. 319, 325 (1989).² As discussed below, plaintiff's claim has no arguable basis in law or in fact and shall be dismissed as frivolous pursuant to 28 U.S.C. §§ 1915(e)(2)(B)-1915A(b)(1).

II. DISCUSSION

A. The Complaint

In the complaint, plaintiff alleges as follows:

² Neitzke applied § 1915(d) prior to the enactment of the Prisoner Litigation Reform Act of 1995 (PLRA). Section 1915(e)(2)(B) is the re-designation of the former § 1915(d) under the PLRA. Therefore, cases addressing the meaning of frivolousness under the prior section remain applicable. See § 804 of the PLRA, Pub.L.No. 14-134, 110 Stat. 1321 (April 26, 1996).

The drinking water in M.P.C.J.F is not being purified properly. The correctional staff is advised to drink bottled water while at work. The Commissioner and Warden are both aware of this problem and neither have taken steps to provide inmate population with clean purified drinking water. (D.I. 2 at 2)

Plaintiff requests that the court issue an order requiring the defendants to place water fountains or water coolers with filtration capabilities in each housing area. He further requests that the court award him \$500,000 in compensatory damages. (D.I. 2 at 4) Finally, plaintiff requests that the court order the defendants to conduct tests on the drinking water at the MPCJF. (D.I. 6)

B. Analysis

Plaintiff has failed to provide the court with any specific facts regarding the defendants' alleged unconstitutional conduct. It has long been established in this circuit that a complaint under § 1983 must set forth specific facts regarding the defendants' alleged unconstitutional conduct. See Darr v. Wolfe, 767 F.2d 79, 80 (3d Cir. 1985) (collecting cases). Plaintiff merely alleges that the water in the MPCJF is not "purified properly." However, he has not provided the court with any specific problems with, or contaminants in the water.

Furthermore, plaintiff implies that the water is unsafe and may cause health problems, but has not alleged that he has suffered any specific health problems as a result of drinking the water or that his own health has been placed at any particular risk. Finally, the court notes that plaintiff is no longer incarcerated at the MPCJF and has not indicated in the complaint how long he was incarcerated there.

Plaintiff's complaint, as presented, is "lacking in specific facts to support his conclusory claim" against defendants Williams and Taylor. Id. at 81. Consequently, plaintiff's claim has no arguable basis in law or in fact. Therefore his claim against defendants Williams and Taylor shall be dismissed as frivolous without prejudice pursuant to §§ 1915(e)(2)(B)-1915A(b)(1).

NOW THEREFORE, IT IS HEREBY ORDERED this 10th day of December 2003, that:

1. Plaintiff's claim against defendants Williams and Taylor is dismissed without prejudice pursuant to 28 U.S.C. §§ 1915(e)(2)(B)-1915A(b)(1).

2. The clerk shall mail a copy of the court's Memorandum Order to plaintiff.

Sue L. Robinson
United States District Judge